

8-17-04

JFW § DAE  
MTC 6692.1  
PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of David Z. Becher, et al.

Serial No. 09/652,771

Filed August 31, 2000

Confirmation No. 4545

For ENHANCED METHOD OF KILLING WEEDS WITH GLYPHOSATE HERBICIDE

Examiner Alton N. Pryor

August 16, 2004

**REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT**  
**PURSUANT TO 37 CFR §1.705**

TO THE COMMISSIONER FOR PATENTS,

Mail Stop ISSUE FEE

P.O. Box 1450

Alexandria, VA 22313-1450

SIR:

In response to the Notice of Allowance dated May 20, 2004 in the above-referenced patent application, Applicants respectfully request reconsideration of the patent term adjustment determination. Pursuant to 37 CFR §1.705(b) and/or (d), Applicants submit the following statement of facts in support of this request for reconsideration.

The above-reference patent application was filed on August 31, 2000. The Notice of Allowance indicated that the subject application was entitled to a patent term adjustment of **0 days**. The basis for the indicated patent term adjustment is an Office delay of **0 days** and applicant delay of **167 days**. The applicant delay was calculated as the sum of:

- A. **86 days** as calculated under 37 CFR § 1.704(b) as the difference between the time period beginning on the day after the date that is three months after the date the Office action (i.e. Notice to File Missing Parts) was mailed (i.e. January 17, 2001) and ending on the date the Response was filed (i.e. April 12, 2001);
- B. **20 days** as calculated under 37 CFR § 1.704(b) as the difference between the time period beginning on the day after the date that is three months after the date the Office action (i.e. Final Rejection) was mailed (i.e. August 16, 2002) and ending on the date the Response after was filed (i.e. September 4, 2002); and

- C. **61 days** as calculated under 37 CFR § 1.704(b) as the difference between the time period beginning on the day after the date that is three months after the date the Office action (i.e. Non-Final Rejection) was mailed (i.e. June 27, 2003) and ending on the date the Response after was filed (i.e. August 27, 2003).

Applicants submit that the **applicant delay** must be recalculated. First, the 86 day applicant delay was based on an incorrect response date of April 12, 2001. The Response to the Notice to File Missing Parts was, in fact, filed on February 1, 2001 as indicated on the enclosed copy of the return postcard thereby giving a delay of **16 days**. Second, pursuant to 37 CFR §1.704(c)(10), the submission of an amendment under 37 CFR §1.312 submitted after the Notice of Allowance is mailed will be considered a failure to engage in reasonable efforts to conclude prosecution, and the patent term will be reduced by the lesser of (1) the period between the filing date of the amendment and the Office response or (2) four months. A first amendment under 37 CFR §1.312 was filed on June 11, 2004 with an Office response entered on July 21, 2004; a delay of **41 days**. A second amendment under 37 CFR §1.312 was filed on August 3, 2004. Applicant's undersigned attorney interviewed Examiner Alton Pryor on August 12, 2004 regarding entry of that Rule 312 amendment. Examiner Pryor agreed on that date to enter the amendment, thus giving an applicant delay of 10 days. A recalculated applicant delay of  $16 + 20 + 61 + 41 + 10 = 148$  **days** results.

Applicants respectfully submit that the 0 day **Office delay** as was incorrectly calculated, and should instead be **260 days**. According to 37 CFR §1.702(b), the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent (i.e., Notice of Allowance mailed on May 17, 2004) within three years after the date on which the application was filed under 35 U.S.C. §111(a) (i.e., August 31, 2000), with the period of adjustment being the number of days in the period beginning on the day after the date that is three years after the filing date. The Office delay is therefore 260 days.

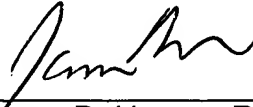
The above-mentioned Notice of Allowance, dated May 17, 2004, indicated that the patent term adjustment is 0 days. However, from the above stated facts, the patent term adjustment should equal **112 days** (260 days - 148 days).

The subject application is not subject to a terminal disclaimer.

In light of the foregoing facts, Applicants respectfully request reconsideration of the patent term adjustment. The Commissioner is hereby authorized to charge the \$200 fee and any additional fees which may be required to Deposit Account No. 19-1345. However, in view of the fact that the Office made a mistake in calculating the

correct patent term adjustment, Applicants respectfully request that the fee in connection with this request be waived.

Respectfully submitted,



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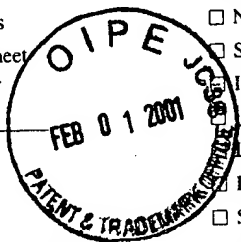
MISCELLANEOUS

(390)

File mtc 6692.1 Attorney JKR/r6  
 Client Name Monsanto Company  
 Inventor(s) or Mark David Becher  
 Serial No. 09/6652, 771 Patent/Reg. No. \_\_\_\_\_

The following has been received by the U.S. Patent and Trademark Office on the date stamped hereon:

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| <input type="checkbox"/> Preliminary Amendment                | <input checked="" type="checkbox"/> Combined Declaration/Power of Attorney   |
| <input checked="" type="checkbox"/> Response to Missing Parts | <input type="checkbox"/> Notice of Appeal                                    |
| <input type="checkbox"/> Assignment and Cover Sheet           | <input type="checkbox"/> Status Inquiry                                      |
| <input type="checkbox"/> _____ Brief                          | IDS, PTO-1449, _____ References  |
| <input checked="" type="checkbox"/> Check \$ <u>520.00</u>    | _____ Sheet(s) _____ of Drawing(s)   |
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| <input type="checkbox"/> Section _____ Declaration            | <input type="checkbox"/> Extension of Time to Oppose                         |
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